

968 NW Sequoia
Corvallis, OR 97331
14 December, 2009

Federal Communications Commission
Washington, DC 20002

In the matter of: NBP Public Notice #27

Sirs:

In question A, you ask "what technological and market-based limitations keep retail video devices from accessing all forms of video content that consumers want to watch?"

I cannot speak for all forms of content for all consumers. I have no problem accessing the computer network and using the services available there, but am concerned that net-neutrality will need to be enforced if service and content providers become united (such as Comcast and NBC) and service providers naturally want to favor content they provide. In the long run, it may also be necessary to regulate RFC ("Request For Comment", the means of creating Internet standards) conformance to prevent such nonsense as special-purpose DNS servers that point users to preferred content providers when a user mistypes the name of the provider he actually seeks. This is already occurring under some ISPs.

That is not to say that I find no serious limitations existant today. I will focus the remainder of my comments on one specific technical and regulatory limitation that has most recently interferred with my access to video content. Specifically, the Federal Communication Commission's failure to deal with 47 USC 544a and cable television providers.

Until Nov. 10, 2009, Comcast of Oregon was providing every digital subscriber unencrypted digital signals for the lowest-tier of digital service. While the selection of consumer provided equipment (CPE) has

been limited, many newer televisions and video devices are available with ClearQAM tuners. I have several ClearQAM-capable devices which I was using to view and record the digital services to which I had subscribed and am still paying to access. This met, in my opinion, the requirements of 47 USC 544a(c)(1)(B) i, ii, and iii. While the "navigation" was problematic (i.e., no fixed mapping between "cable channel 63" and "ClearQAM channel 67-3") it was a minor problem.

On Nov. 11, without prior notice, Comcast of Oregon began encrypting all digital services except those corresponding to the analog basic services. I.e., what remained in the clear were mostly local broadcast and public, education, and government (PEG) channels, with a few shopping channels. Even though I was still paying to access enhanced (digital) services, I was no longer able to use the CPE I had invested in to view those services.

Comcast of Oregon has, through a requirement for backwards compatibility with analog subscribers, and perhaps prudent planning, segregated the digital channels to appear above channel 63 in analog terms, other than using several analog gaps between channels 15 and 19 to carry PEG and local broadcast signals which are not being encrypted anyway. Because of this, the considerations of 47 USC 544a(c)(1)(C) (prevention of theft of signal) can easily be met through the use of the same traps Comcast of Oregon used to rely on to prevent basic analog subscribers from receiving advanced analog signals. By installing the same trap that prevented analog subscribers from receiving analog channels above 30, Comcast could easily prevent non-digital subscribers from receiving the digital signals which are currently being carried above channel 63.

I understand that Comcast would find the use of traps to be less convenient, but would the FCC or Federal Trade Commission allow the argument of "convenience" were Comcast to claim that actually running a wire into my house when I have service installed is "too inconvenient" and thus won't be done, even though they would begin charging me for cable service? At some point "corporate convenience" must be trumped by "consumer is paying for service".

Further, since premium channels can be, and were, encrypted, Comcast

had been meeting their need to prevent basic level digital subscribers from receiving signals they were not authorized to receive. If Comcast were to continue using the traps which were in use as late as February of 2009, they could prevent analog subscribers from stealing digital service, while allowing digital subscribers complete access via CPE to the basic digital video services in unencrypted form.

Allow me to point out that it would be impossible for a digital-basic subscriber to be stealing the unencrypted digital services since every one of those services is part of the lowest-tier digital package. When a digital subscriber cancels his service, the installation of a trap would prevent him from any further access.

To address the concern of potential switched digital video services, I would point out that the existing system design for Comcast has 30 empty channels (between 31 and 63, inclusive) which can be used for expansion, in either encrypted (for premium services) or unencrypted form.

In question D, you ask what obstacles stand in the way of "convergence", and point out that "CableCARD rules have had limited success in developing a retail market". This failure, I feel, has been based on the fact that while a consumer may technically own the CableCARD used to allow access to digital services, the cable companies retain complete control and, in many cases, charge a monthly fee for the use of that device. (I believe Comcast of Oregon will allow the use of one CableCARD-enabled device with no additional charge; additional devices require a monthly payment. I purchased CPE both for enhanced capabilities and to avoid paying "double".)

It is exactly this kind of situation which prompted the Cable Consumer Protection Act of 1992 and created 47 USC 544a. The clear intent of the legislature was that CPE should not only be allowed but should be promoted in the interests of the consumer and the industry as a whole. It resulted in the proliferation of VCR, DVR, and television equipment with advanced capabilities such as "picture in picture", and programming capabilities such as "record all episodes of this serial, no matter what time they are on or if we are watching something else." There is no question that the technology was driven

by consumer demand and we would not be where we are today without the gates being opened.

We have, I fear, returned to the dark ages, similar to the time when Ma Bell controlled what you could attach her phone lines. Where the cable company controls what equipment can be used and what functions will be provided. According to Comcast of Oregon, it is sufficient for me to be able to schedule the recording of a show two days in advance (the limit of the on-screen program guide in the full-feature cable box I have been provided), with the additional requirement that I attach the VCR only to that box and must also program that VCR to record that signal. I cannot schedule two different channels to be recorded "every week" or even "day after tomorrow" -- a task that was trivial using the CPE I have already invested in, and which appears specifically as a consideration in 47 USC 544a(c)(1)(B)(ii).

A task which, I will remind you, was possible as recently as Nov 10, 2009, and which was removed without prior notice. Comcast of Oregon has demonstrated that it can meet the CPE considerations of 47USC544a but has chosen not to.

In my opinion, this clear breach of the content and intent of 47 USC 544a needs to be rectified before we attempt to regulate extended data contents for "navigation devices". If the cable and network providers can simply overrule any regulations with "don't wanna" as Comcast is doing in this case, then there is no reason to regulate any part of it.

John Stanley